

# State of South Dakota

## EIGHTIETH SESSION LEGISLATIVE ASSEMBLY, 2005

832L0496

### HOUSE BILL NO. 1116

Introduced by: Representatives Boomgarden, Jerke, Novstrup, Schafer, Sebert, and  
Turbiville and Senators Kooistra, Broderick, Gant, Napoli, and Nesselhuf

1 FOR AN ACT ENTITLED, An Act to exempt persons who have not been drinking from  
2 charges of open container in a motor vehicle.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 35-1-9.1 be amended to read as follows:

5 35-1-9.1. It is a Class 2 misdemeanor for any person occupying a motor vehicle located upon  
6 a public highway or the right-of-way of a public highway to consume any alcoholic beverage  
7 or have a package or any receptacle containing an alcoholic beverage in that person's possession  
8 unless the seal of the original package remains unbroken or the alcoholic beverage is so  
9 removed from the passenger area of the motor vehicle that no occupant of the motor vehicle has  
10 access to it. However, no person may be charged pursuant to this section unless the law  
11 enforcement officer has probable cause to believe there is alcohol in the person's blood and a  
12 chemical analysis of the person's breath discloses there is alcohol in the person's blood.

